



Federal Communications Commission
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In Reply Refer to:
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Union County Broadcasting Co., Inc.
P.O. Box 369
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Mr. Martin Hensley
Hoosier Public Radio Corporation
15 Wood Street
Greenfield, IN 46140

In re: Union County Broadcasting Co., Inc.
Station WMSK(AM), Morganfield, KY
Facility ID No. 68808

File No. BR-20040329AJU

Station WEZG(FM), Morganfield, KY
Facility ID No. 68810

File No. BRH-20040329AJQ
File No. BLH-20050124ACP

Petitions to Deny

Gentlemen:

By this letter, we grant the above-noted applications of Union County Broadcasting Co., Inc. (the "Licensee") for renewal of its licenses for Stations WMSK(AM) (the "WMSK(AM) Application") and WEZG(FM)¹ (the "WEZG(FM) Application") (the WMSK(AM) Application and the WEZG(FM) Application, collectively the "Applications"), Morganfield, Kentucky, as amended.² We also grant the above-noted application for covering license for WEZG(FM) (the "WEZG(FM) License Application").³ As set forth below, we also dismiss or deny: (1) the Petition to Deny the Applications received by the

¹ WMSK-FM's call sign was changed to WEZG(FM) on November 1, 2006. For clarity, we will refer to the station as WEZG(FM) throughout this letter, and it and WMSK(AM) as, collectively, the "Stations."

² As discussed below, the Licensee amended each of the license renewal Applications on August 26, 2004.

³ The WEZG(FM) License Application was filed to cover the completion of construction of modified facilities for WEZG(FM) authorized by the staff's grant of Application No. BMPH-20040116ADB on August 17, 2004. That application was not contested prior to its grant.

Commission on July 31, 2003, filed by Martin L. Hensley (“Hensley”) (the “2003 Petition”)⁴; (2) the Petition to Deny the WEZG(FM) Application filed by Hoosier Public Radio Corporation (“Hoosier”) received by the Commission on August 9, 2004 (the “August 9 Petition”); (3) the Petition to Deny the WEZG(FM) Application filed by Hensley received by the Commission on August 23, 2004 (the “August 23 Petition”);⁵ and (4) the March 2, 2005, “Petition to Deny – Request for Hearing” filed by Hoosier and Hensley regarding the WEZG(FM) License Application (the “March 2, 2005, Petition”).

Failure to Timely File. Section 73.3516(e) of the Commission’s Rules (the “Rules”) requires that a petition to deny an application for renewal of a broadcast license be filed “by the end of the first day of the last full calendar month of the expiring license term.”⁶ Because the licenses for the Stations were each to expire on August 1, 2004,⁷ the filing deadline for petitions to deny the Applications was July 1, 2004. Accordingly, because the August 9 and August 23 Petitions were filed after this deadline, we will dismiss them pursuant to Section 73.3584(e) of the Rules.⁸ Moreover, petitions to deny do not lie

⁴ In his 2003 Petition, submitted months before the Applications were filed, Hensley listed in its caption the file numbers (BAL-20000327AAQ and BALH-20000327ABF) of applications for consent to assign the Stations that had long since been dismissed at the request of the parties, on October 11, 2000. Accordingly, we dismiss the Petition pursuant to Section 73.3584(e) of the Commission’s Rules. 47 C.F.R. § 73.3584(e). However, because, as discussed below, the Bureau’s EEO staff conducted an investigation of Hensley’s allegations in the context of its review of the Applications, and the Licensee’s submission to the staff in that investigation is the subject of Hensley’s August 23, 2004, Petition to Deny the WEZG(FM) Application, we will consider the 2003 Petition in this letter as a complaint.

⁵ The Licensee filed a Response to the August 9 and 23 Petitions on September 8, 2004 (the “Licensee Response”), and Hensley and Hoosier filed Reply Comments on September 24, 2004 (the “Reply Comments”). Additionally, the Media Bureau staff sent an inquiry letter regarding Equal Employment Opportunity matters to the Licensee on July 14, 2004, to which the Licensee responded on August 2, 2004, and to which Hensley then filed comments on August 3, 2004.

Additionally, Hensley filed a “Petition to Deny Construction Permit (Rescind CP)” on September 7, 2004, which, although listing the WMSK(AM) and WMSK-FM Applications in its caption, actually addressed only an uncontested minor modification application for WMSK-FM (File No. BMPH-20040116ADB) that had been routinely granted by the staff on August 17, 2004. The Licensee submitted a “Motion to Dismiss and Opposition” to this pleading on October 19, 2004. The staff dismissed the September 7, 2004, Hensley Petition as an untimely objection to the granted modification application by letter dated December 9, 2004. *Letter to John F. Garziglia, Esq. and Martin L. Hensley*, Reference 1800B3-MFW/GDG (MB Dec. 9, 2004). There is no record of any petition for reconsideration of that action. Accordingly, we need not address in this letter either Hensley’s September 7, 2004, Petition or the Licensee’s October 19, 2004, Motion to Dismiss and Opposition to it.

⁶ See 47 C.F.R. §73.3516(e).

⁷ See 47 C.F.R. § 73.1020.

⁸ See 47 C.F.R. §73.3584(e). We also note that the 2003, August 9 and August 23 petitions are also defective because they fail to establish the standing of the petitioner. Moreover, they do not contain affidavits of a person or persons with personal knowledge of the allegations of fact contained in the submissions. See 47 U.S.C. § 309(d)(1); *FCC v Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Martin-Trigona v FCC*, 432 F.2d 632 (D.C. Cir. 1970); *Lawrence N. Brandt*, 3 FCC Rcd 4083 (Common Car. Bur 1988); *Chet-5 Broadcasting, L.P.*, 14 FCC Rcd 13041 (1999). For these reasons as well, we dismiss the Petitions.

against covering license applications.⁹ We will nevertheless consider them each as an informal objection pursuant to Section 73.3587 of the Rules.¹⁰

Informal Objections. We deny the August 9 and August 23 petitions under the pleading standards for the evaluation of informal objections. Informal objections must, pursuant to Section 309(e) of the Act, provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with Section 309(k).¹¹ Section 309(k)(1) provides that the Commission is to grant a license renewal application if, upon consideration of the application and pleadings, we find that: (1) the Station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Rules, and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹² If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹³ As discussed further below, Hensley has failed to present specific factual allegations sufficient to raise a substantial and material question of fact whether the grant of either of the Applications would be inconsistent with the public interest.

The Pleadings. On March 29, 2004, the Licensee timely filed the Applications. Hensley had earlier filed the 2003 Petition against the long-since dismissed assignment applications regarding the Stations. In response to the 2003 Petition, and in the course of its processing of the Applications, on July 14, 2004, the Media Bureau sent a letter of inquiry to the Licensee requesting further information concerning the Licensee’s compliance with the Equal Employment Opportunity (“EEO”) requirements of the Rules.¹⁴ The Licensee responded by letter dated August 2, 2004.¹⁵

⁹ See 47 U.S.C. § 309(c); 47 C.F.R. § 73.3584(a).

¹⁰ See 47 C.F.R. § 73.3587.

¹¹ See, e.g., *WWOR-TV, Inc.*, 6 FCC Rcd 193, 197 note 10; *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 RR 2d 862, 864 (1986) (informal objection must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹² 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). See *Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

¹³ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁴ Letter from Lewis Pulley, Chief, EEO Staff, Policy Division, Media Bureau, Federal Communications Commission to Union County Broadcasting Co., Inc. (July 14, 2004), citing 47 C.F.R. § 73.2080 (the “EEO LOI”).

¹⁵ Letter from J.B. Crawley to Lewis Pulley, Chief, EEO Staff, Policy Division, Media Bureau, Federal Communications Commission (Aug. 2, 2004) (the “LOI Response”).

In its August 9 Petition,¹⁶ Hoosier contends that the WEZG(FM) Application was defective and should be dismissed because it was not signed by “an officer, director, or party to the application.”¹⁷ In the August 23 Petition, Hensley alleges that the Licensee’s LOI Response was insufficient because, among other things, it was unsigned and misrepresented to the Commission that the Licensee employed fewer than five full-time employees when in fact, according to Hensley, the Licensee had at least that many such employees.

In their Reply Comments, Hensley and Hoosier again argue that the Applications should be dismissed because they were signed “by John Robinson (third party) who is not a person who can certify the facts of the License renewal.” They also maintain that control of the Stations, particularly WEZG(FM), had been transferred because a modification application¹⁸ for WEZG(FM) was filed by “Charles Anderson of Bowling Green, Kentucky,” who allegedly was attempting to buy the Stations. This, maintains Hensley, is an “obvious form of pre control of the License.”¹⁹

In its March 2, 2005, Petition with respect to the WEZG(FM) License Application, Hoosier and Hensley reiterate arguments previously made regarding John Robinson improperly signing the license renewal application and the unauthorized transfer of control of WEZG(FM) to Charles Anderson.²⁰ It also argues that the WEZG(FM) public inspection file is deficient²¹ and that the station had not purchased any EAS equipment.²²

Application Signature Requirement. Section 73.3513(a)(3) of the Rules requires that an application filed by a corporation must be signed an officer.²³ Both of the Licensee’s originally-filed

¹⁶ Although the August 9 Petition references “WMSK-AM” in its first paragraph, it does not list the file number of or discuss the WMSK(AM) Application.

¹⁷ August 9 Petition at 1.

¹⁸ File No. BMPH-20040116ADB, granted by the staff on August 17, 2004. Public notice of the grant was issued on August 20, 2004. See *Broadcast Applications*, Public Notice, Report No. 45803 (Aug. 20, 2004).

¹⁹ Reply Comments at 1. To the extent that Hensley and Hoosier’s September 24, 2006 Reply Comments can be read to challenge the modification application, that effort is untimely and will not be considered. Petitions for reconsideration of the application’s grant were due 30 days after the August 20, 2004, public notice of the grant, by Monday, September 20, 2004. See U.S.C. § 405; 47 C.F.R. § 1.106(f).

²⁰ Hoosier and Hensley supplement this transfer of control claim by alleging that Charles Anderson “and Steven Newberry, who are purchasing [(WEZG(FM), plan)] to relocated the station “and abandon Morganfield, Kentucky.” March 2, 2005 Petition at 1.

²¹ Hoosier and Hensley state that that the WEZG(FM) public file “has been deficient of Quarterly Issues and Answers, EEO information, and other information required to be within the Public Inspection File.”

²² Hoosier and Hensley also argue that, although the Licensee indicates that it has fewer than five employees, “it was operating with no remote control unit until it began operations with a remote control unit owned by Hensley in 2001”; Hoosier and Hensley claim that the station “refuses to return” Hensley’s remote control unit, and thus it has “no remote controller it owns.” We are uncertain of the nature of the violation alleged by this claim, and will accord it no further discussion.

(footnote continued)

Applications had the name of John Robinson in the space for the name of the individual certifying the application on behalf of the applicant, providing his title as “General Manager.”²⁴ Mr. Robinson is not an officer of the Licensee. The Licensee acknowledges that his signature was inserted into the certification block due to an “inadvertent clerical error” by Mr. Robinson’s assistant in preparing the Applications prior to their electronic filing because Mr. Robinson regularly signed contracts for the Licensee in the ordinary course of his duties as General Manager.²⁵ The Licensee represents that its President, J.B. Crawley, reviewed and approved each Application prior to its electronic filing.²⁶ On August 26, 2004, the Applicant amended each Application to substitute the Mr. Crawley as the certifying party. The Commission has held that, as long as an application is “substantially complete,” curative amendments to correct signature deficiencies will be accepted.²⁷ In the renewal context, the Commission has allowed an applicant to cure such a defect.²⁸ Because the Applications were “substantially complete” as originally filed, we will accept the Licensee’s curative amendments. Accordingly, because each Application now complies with Section 73.3513 of the Rules, the signature issue is a moot one.

Compliance with EEO Rules. In connection with the Applications, the Licensee filed the required FCC Form 396, Broadcast Equal Employment Opportunity Report.²⁹ Therein, it indicated that it employed fewer than five full-time employees and therefore was exempt from the Commission’s EEO program requirements.³⁰ In his 2003 Petition, Hensley alleged that the Stations and/or the Licensee did not employ minorities, did not employ women in any management job, misrepresented the number of its full-time employees in order to avoid compliance with the Commission’s EEO rule, did not recruit for minorities or advertise for vacancies, made derogatory remarks against minorities and ethnic groups, and organized a boycott against urban music.³¹

²³ See 47 C.F.R. § 73.3513(a)(3); see also *Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705 (1991) and *Central Florida Communications Group, Inc.*, Hearing Designation Order, 6 FCC Rcd 522, 523 (MMB 1991).

²⁴ See File Nos. BR-20040329AJU and BRH-20040329AJQ at 6.

²⁵ See Licensee Response at 2; August 26, 2004, amendments to the Applications at Exhibit 1.

²⁶ See Licensee Response at 2.

²⁷ See, e.g., *Communications of Gaithersburg, Inc.*, Memorandum Opinion and Order, 60 FCC 2d 537 (1976) (permitting applicant to amend an AM application signed by person not qualified to sign under the Commission’s rules and submit a correct signature); *Santa Monica Community College District*, Hearing Designation Order, 9 FCC Rcd 3134 (1994) (allowing applicant to amend an NCE-FM application to include a signature that complies with Section 73.3513 of the Commission’s rules); and *Jane A. Roberts*, Decision, 29 FCC 141, 149-150 (1960) (allowing *nunc pro tunc* amendment of signature, thus conforming application with the requirements of the Commission’s rules).

²⁸ See *KQED, Inc.*, Decision, 3 FCC Rcd 2821, 2831-32 (Rev. Bd. 1988).

²⁹ See File No. B396-20040329AJE.

³⁰ See 47 C.F.R. §§ 73.2080(b), (c), (d).

³¹ 2003 Petition at 2-5.

In its EEO LOI, the Bureau directed the Licensee to identify, by title and regularly assigned weekly hours of employment, all employees hired during certain time periods in 2003 and 2004. The Licensee submitted the requested data and also included information as to which employees were paid corporate benefits as full-time employees.³² Hensley maintains that the Licensee's response to the EEO LOI is defective because it is unsigned,³³ and "lacks credibility" because it does not provide specific information. He also claims that the Licensee employed at least five full-time employees because the two "owners" of the Stations should each be counted as full-time employees.³⁴

The Licensee's LOI Response reflects that Mr. Crawley, the Licensee's President and shareholder, did sign the LOI Response, did provide the information requested in the EEO LOI, and was correct in representing that the Licensee employed fewer than five full-time employees. Station principals holding a 20 percent or greater voting interest in a licensee are not considered station employees for EEO purposes.³⁵ The Licensee's Ownership Reports (FCC Forms 323) for 2002 and 2003 show that J.B. Crawley and Elizabeth Crawley, respectively, held a 52.1% and 47.9% stock and voting interest in the Licensee.³⁶ The Licensee indicates that Mr. and Mrs. Crawley never "held a position of employment over and above their status as owners of the station during the time periods in question."³⁷

³² On August 3, 2004, Hensley filed a letter regarding the EEO LOI, indicating that that he had not been, but should be, served with a copy of the Licensee's response and requesting an opportunity to provide additional information upon receipt of the response. He also makes arguments about the Stations being sold and the improper signature on the Application that are raised in other pleadings and discussed elsewhere in this letter. Letter from Martin Hensley to Estella Salvatierra, Esquire, EEO Staff, Policy Division, Media Bureau, Federal Communications Commission (Aug. 3, 2004).

³³ Hensley also complains that the LOI Response was not mailed him by the Licensee "in a timely manner" (not until August 13, 2004, two weeks after it was filed) and that is defective because it was not signed. August 23 Petition at 1. The Licensee responds that, although the EEO LOI did not direct it to serve a copy on Hensley, it nevertheless did so. It responds further that its LOI Response filed with the Commission was signed by Mr. Crawley but that the copy that it served on Mr. Hensley inadvertently was unsigned, but was identical to what it filed with the Commission, but for the inclusion of the signature. Licensee Response at 4. Because the EEO LOI did not direct the Licensee to so serve Hoosier, it had no obligation to do so. See 47 C.F.R. § 1.1204(a)(10) (responses to Commission inquiries in non-hearing proceedings are generally exempt from the *ex parte* rules. Even assuming *arguendo* that the Licensee was required to serve Hensley with its Response, he was not prejudiced by the Licensee's delay in doing so. Hensley ultimately received a copy of the LOI Response, and his comments on that Response were provided to the Commission and are being considered here. See, e.g., *Wendell & Associates*, Memorandum Opinion and Order, 14 FCC Rcd 1671 (1998) (no sanction for unintentional violation of the *ex parte* rules), *J. Geoffrey Bentley, Esq.*, Letter, 4 FCC Rcd 3422 (OMD 1989) (violation of the *ex parte* rules did not prejudice applicants when applicants were able to address the arguments made in the *ex parte* filing).

³⁴ *Id.* at 2-4.

³⁵ See *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018, 24072 (2002) ("*EEO Order*").

³⁶ The Licensee reports that Mrs. Crawley passed away in the fall of 2003. Response at 6. The Licensee's subsequent Ownership Reports list Mr. Crawley as the sole shareholder of the Licensee. See File Nos. BON-20041014AEV, BOB-20060404AEO.

³⁷ Licensee Response at 6.

Accordingly, we conclude from our review of these materials that the Licensee employed only three full-time employees during the specified periods in 2003 and 2004. Because stations with fewer than five full-time employees are exempt from those provisions of the Commission's EEO Rule, which mandate general and specific EEO program requirements, including recruitment for vacancies and participation in EEO initiatives, the Licensee was not subject to those obligations.³⁸

Other Arguments. In the August 23 Petition, Hensley maintains that the Licensee is guilty of discrimination because: (1) all 12 of its employees are white; (2) it has had only one black employee in 40 years; and (3) that employee was "discriminated against."³⁹ Hensley submits no affidavit or other materials in support of these allegations. We note that the EEO Rule does not require that licensees hire any specific number of minorities. Moreover, the Commission generally defers action with regard to allegations of discrimination by licensees, pending final action by the Equal Employment Opportunity Commission or other government agencies and/or courts established to enforce nondiscrimination laws.⁴⁰ In their September 24, 2004, Reply Comments, Hensley and Hoosier maintain that the Licensee has transferred control of the Stations to Charles Anderson, the consultant who prepared the engineering section of the modification application and signed the engineering certification.⁴¹ Hensley provides no evidence to support any of these claims. In fact, although Anderson did sign the engineering portion of that application, the filing was properly certified on behalf of the Licensee by its President, Mr. Crawley. These allegations warrant no further inquiry. Finally, in their March 2, 2005, Petition, Hoosier and Hensley argue that the WEZG(FM) public inspection file is deficient and that the station has not purchased EAS equipment "as recently as 2001."⁴² Hensley provides no evidence, anecdotal or otherwise, to support any of these claims, which in any event have little relevance regarding the propriety of grant of the WEZG(FM) License application.⁴³ Accordingly, these allegations warrant no further inquiry.

³⁸ See 47 C.F. R. § 73.2080(d).

³⁹ August 23 Petition at 4.

⁴⁰ *EEO Order*, 17 FCC Rcd at 24036.

⁴¹ Reply Comments at 2-3. Hensley and Hoosier indicate that the modification application "was submitted . . . by a party [Charles Anderson] who is attempting to buy the stations." Reply Comments at 1. Mr. Anderson is the consultant who prepared the engineering section of the modification application and signed the engineering certification. See Application No. BMPH-20040116ADB, Section III, Preparer's Certification. The application was signed on behalf of the Licensee by its President, J.B. Crawley. Thus, we cannot infer an unauthorized transfer of control here.

⁴² March 2, 2005, Petition at 2.

⁴³ Under Section 319(c) of the Act, Union County Broadcasting Co. has a protected interest in grant of its license application, see *Meyer Broadcasting Company*, Memorandum Opinion and Order, 65 FCC 2d 438, 441 (1977), and we are mandated to grant the license application unless "extraordinary circumstances" have arisen, since grant of the permit, which would make the operation of the station against the public interest. *Radio Ingstad Minnesota, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 8502, 8504 (1997), citing *Whidbey Broadcasting Services, Inc.*, Memorandum Opinion and Order, 4 FCC Rcd 8726, 8727 (1989). Under this test, Hoosier and Hensley's challenge fails.

Conclusion/Actions. In light of the foregoing, in accordance with Section 309(k) of the Act, we find neither evidence of serious violations of the Act or the Rules nor of other violations that, when considered together, evidence a pattern of abuse. Further, we find that Stations WMSK(AM) and WEZG(FM) each served the public interest, convenience, and necessity during the subject license term. Accordingly, there is no need for further inquiry regarding the Applications, which we will grant. Additionally, in accordance with Section 319(c) of the Act, it appears that all terms, conditions, and obligations set forth in the WEZG(FM) modification permit have been fully met, and there is no cause or circumstance that would make the operation of WEZG(FM) with its modified facilities against the public interest, and we will grant the WEZG License Application.

Pursuant to Section 309(k) of the Communications Act of 1934, as amended, and Sections 0.61 and 0.283 of the Commission's Rules,⁴⁴ the Petitions to Deny filed by Martin Hensley received by the Commission on July 31, 2003, and on August 23, 2004, and the Petition to Deny filed by Hoosier Public Radio Corporation received by the Commission on August 9, 2004, ARE EACH DISMISSED. The August 9 and 23, 2004, Petitions, considered as informal objections, and the July 31, 2003, Petition, considered as a complaint, ARE EACH DENIED. The applications of Union County Broadcasting Co., Inc. for renewal of the licenses for Stations WMSK(AM) and WEZG(FM) (File Nos. BR-20040329AJU and BRH-20040329AJQ, respectively), finding that the public interest, convenience, and necessity will be served thereby, ARE GRANTED. Finally, the application (File No. BLH-20050124ACP) for license to cover for Station WEZG(FM) IS GRANTED. The authorization will follow under separate cover.

Sincerely,

Monica Shah Desai
Chief, Media Bureau

cc: Howard J. Barr, Esq., Counsel for Union County Broadcasting Co., Inc.

⁴⁴ 47 U.S.C. § 309(k); 47 C.F.R. §§0.61, 0.283.